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# In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
PETITIONER

*vs.*

EPIFANIA PEREZ
RESPONDENT

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DOCKET NUMBER:
ON WRIT OF CERTIORARI FROM
THE SUPREME COURT OF PUERTO RICO

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In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
Petitioner

vs.

EPIFANIA PEREZ
Respondent

DOCKET NUMBER:
on writ of Certiorari from the Supreme Court of Puerto Rico

## I. OPINIONS DELIVERED BY THE COURT BELOW

The opinions delivered in the Courts below are as follows:

1. On August 3, 1977 the Superior Court of Puerto Rico entered a decree against the Petitioner ordering him to vacate the land and to abstain from disturbing Respondent's right as occupant of the land. This opinion is not reported.
2. On February 20, 1979 the Superior Court of Puerto Rico sustained the decree made on August 3, 1977. This opinion is not reported.
3. On October 18, 1979 the Supreme Court of Puerto Rico denied the Writ of Certiorari requested by Petitioner to review the Superior Court decision of February 20, 1979. This opinion is not reported.
4. On December 20, 1979 the Supreme Court of Puerto Rico denied appeal to review the decision of the Superior Court not to stay order to vacate which would come in effect on December 7, 1979. This opinion is not reported.
5. On February 28, 1980 the Superior Court of Puerto Rico denied motion to strike decree and order of August 3, 1977. This opinion is not reported.
6. On April 17, 1980 the Supreme Court of Puerto Rico denied the writ of Review filed by Petitioner. This opinion is not reported.

7. On May 15, 1980 the Supreme Court of Puerto Rico denied the Motion for reconsideration filed by the Petitioner. This opinion is not reported.
8. The opinions delivered by the Superior and Supreme Court of Puerto Rico are included as appendices. Petitioner has filed a Motion in the Supreme Court of Puerto Rico to obtain the official translation of the opinions entered by the Court as requested by Rule 23 and 37 of this Court.

## II. CONCISE STATEMENT OF THE GROUND ON WHICH JURISDICTION IS INVOKED

1. The Superior Court of the Commonwealth of Puerto Rico decided against the Petitioner on August 3, 1977.
2. Petitioner filed a timely Review on April 12, 1980, which was denied and a Motion for Reconsideration before the Supreme Court of the Commonwealth of Puerto Rico which was denied on May 15, 1980. Petitioner filed a Motion of Reconsideration stating the federal question of violation of due process of law guaranteed by the 5th and 14th amendment on June 3, 1980. No motion for extention of time has been filed.
3. The statutory provision which grants the Supreme Court of the United States jurisdiction to review this judgement by writ of Certiorari is 28 U.S.C. Section 1258 (3).

## III. QUESTIONS PRESENTED FOR REVIEW

A) *The Supreme Court of Puerto Rico disregarded Petitioner's right to due process of law guaranteed by the Fourteenth and/or Fifth amendment of the United States Constitution by denying him a hearing.*

The State Court deprived Petitioner of property without due process of law and therefore disregarded his right under the United States Constitution. The state court made no legal statement in regard to the Petitioner's right to compensation and Petitioner was denied due process of law guaranteed by the Forteenth Amendment and Fifth Amendment when he was denied a hearing to determine his rights to compensation as a good faith occupant.

The failure of the trial Court to make a finding on Petitioner's good faith in making improvements to the land was reversible error, in view of the state statute which establishes different compensations for the good and the bad faith occupant. A determination as to when and why Petitioner's possession was in bad or good faith is required in order to justly determine the statutory compensation.

The Superior Court decree on February 20, 1979 stated that both parties are "confessed squatters" but it did not apply the statutes which provides for the present situation when both parties are bad faith occupants.

This determination of the Court was based on the fact that the plot of land belongs to an unknown per-

son, not a party in this action. Neither party in this action claimed ownership, but only possession. Respondent by her own testimony, only lived for 3 or 4 weeks in a wooden shack she built on said land in 1974. In 1976, when the shack did no longer exist Petitioner entered into possession of the land and has occupied it as its owner, constructing a cement, wood and zinc house. The trial Court refused to hold a hearing whereby Petitioner could present proof as to his good faith and the time in which he was in good faith this would vary the degree of compensation to Petitioner according to the Puerto Rican Civil Code which we forthwith discuss.

The failure of the trial Court to hold a hearing where determinations of good faith, bad faith and time in each and compensation for any or both situations be made was a plain error and basis for reversal.

The Articule 300 of the Civil Code states:

> "Bad Faith of Both Parties - when there has existed bad faith, not only on the part of the person who build, sowed or planted on another's land, but also on the part of the owner of such land, the rights of both shall be the same as though both had acted in good faith" 31 L.P.R.A. 1167.

By the provision of the applicable state law, once the Superior Court held that both parties were confessed squatters and thereby both were bad faith occupants, the rights of each would be as if both has acted in good faith. The bad faith of both parties is cancelled, and the law states that in that situation

both parties will be considered in good faith. This brings us to the second phase.

The good faith occupant has property rights ascertained by state law and accepted by equity.

Article 297 of the Civil Codes States: "the owner of the land which has been built upon in good faith shall have the rights to appropriate as his own the work, *by previously paying to the owner of the work, the cost of materials and labor, or the cost of reproducing the work at the time the owner of the land exercises his right,* deducting depreciation, whichever is greater or to compel the person who constructed to pay the value of the land". 31 L.P.R.A.-1164 (Emphasis Added).

Article 382 of the Civil Code states:

> *"Necessary expenses are refunded to every possessor;* but *only the possessor in good faith may retain a thing until such expenses are made good to him.* Useful expenses are refunded to the possessor in good faith with the *same rights to retention,* it being at the option of the party who has defeated him in his possession to refund the amount of the expenses or to pay the increase in the value of the *thing* in *consequence* of *such expenses".* (Emphasis Supplied).

Article 383 States:

> "Expenses incurred purely for luxury or mere pleasure are not returnable to the possessor in good faith; but he may remove the ornaments with which he embellished the principal thing if it suffer no injury thereby, and *if his successor in the possession does not prefer to refund the amount expended".* 31 L.P.R.A. 1469 (Emphasis Added).

The right of good faith occupants to be compensated for improvements is also accepted in the federal jurisdiction.

In 42 C.F.S. Section 6 it is stated:

> "Even prior to the modified common law rule, it was the rule under the civil law, on the broad principle of equity, that no one ought to enrich himself at the expense of another, that, were one made permanent improvements on land in his possession under a bona fide belief of ownership, he was entitled to full compensation therefore, less a fair compensation for rents and profits during the period of occupancy, *before the owner of the property could recover the same.* Courts of equity, following the Civil law rule, and applying the principle that he who seeks equity must do equity, held that were an owner of land is required to come into a court of equity to seek a relief as, for instance, to recover the land or obtain an accounting for rents and profits, he must make compensation to the bona fide occupant as a condition to his obtaining the relief sought, the occupant's right to compensation being governed by the particular facts of each case. *The right to compensation exists under the principle of equity independently of the statutory provisions which expressly grant it in certain actions or in certain cases".* (Emphasis Added)

In 42 Corpus Juris Secundum further states in Section 6 (b) that:

> "The reason and justice of recognizing betterment rights as well as the harshness and inequity of the common law in many cases, has resulted in many, perhaps most, jurisdictions, in the enact-

ment of statutes generally known as "betterment acts" or as "occupancy claimant laws" which expressly grant and in some cases enlarge, the rights of the bona fide occupants in respect of compensation for improvements. The general effect of the statutes, however is to compel the owner of the land to pay to the bona fide occupant the amount due for improvements over and above the value of rents and profits during the period of occupancy, as a conditions to his recovery of, or entry on, the land, whether by ejectment, tresspass to try title or other possessory proceedings or as a conditions to his recovery in a suit against the occupant for removing the improvements. The constitutionality of these statutes has generally been upheld". (Also, see 41 American Jurisdiction 3d. Sections 5 and 6.)

The essential requirements for the bona fide occupant's, right to compensation are:

a. good faith-which required his honest and reasonable belief in his claim to ownership.

b. possession- the person must have been in the possession of the land at the time the improvements were made and be in possession at the time the claim is made.

c. color of title or claim of title- "ordinarily to constitute color or title to land, the occupant should have paper title, but this in the absence of a statutory requirements is not always necessary, for color of title may be based on adverse possession under a bona fide claim of title and under the express provisions of some statutes a person has color of title who has

occupied the land for a prescribed, number of years or for a less time if he has made improvements with the owner's knowledge and consent. *Adverse claim of title, as distinguished from color or title, need not be evidenced by a writing*" 42 Corpus Juris Secundum, Section 7. (Emphasis Added)

d. the person entitled to compensation is the owner of the improvements at the time he seeks recovery.

In the present case Petitioner complied with all these essential requirements. Petitioner believed that the plot of land was without owner or occupant and therefore occupied it in October 1976 with the belief that he was the sole possessor of the land. Petitioner occupied the land since October 1976 until present, in that period of time he has made the improvement.s Both parties, Petitioner and Respondent are squatters and they have no written title to the plot of land, but claim possession which under the law of Puerto Rico entitles the occupant to become owner of the land after a number of years. 31 L.P.R.A. 5280.

In *Searl vs. School District*, 133 U.S. 553, this court held that a bonafide occupant had a right to be compensated for the improvements he made in the land of another. This Court declared:

"...and Court of equity, in accord with the principles of the Civil law, when their aid is sought by the real owner, compel him to make allowance for permanent improvements made bonafide by the party lawfully in possession under a defective

> title. The Civil Law recognized the principle of reimbursing to the bonafide possesor the expense of his improvements if he was removed from his possession by the legal owner, by allowing him the increase in the value of the land created thereby. And the betterment laws of the several states proceed upon that equitable view. The right to recovery, when the occupant in good faith believes himself to be the owner, is declared to stand upon a principle of natural justice and equity and such laws are held not to be unconstitutional as impairing vested rights, since they adjust the equities of the parties as nearly as possible according to natural justice and in its application as a shield of protection, the term "vested rights" is not used in any narrow sense, but as implying a vested interest of which the individual cannot be deprived arbitrarily without injustice"

The Petitioner requested the Superior Court and the Supreme Court of Puerto Rico to hold a hearing to determine the Petitioner's right to compensation as the state law recognizes. This was requested by Petitioner several times. On the Motion to Strike Order to Vacate of August 1, 1979, on the Certiorari filed at the Supreme Court of Puerto Rico on September 27, 1979, on Motion to Strike Decree and Order to Vacate filed on December 4, 1979; on a Memorandum of Law filed at the Superior Court in February 15, 1980, in the Writ of Review filed in the Supreme Court of Puerto Rico on March 26, 1980, on the Motion of Reconsideration filed in the Supreme Court of Puerto Rico on May 1st., 1980 and the Motion of Reconsideration filed in the Supreme Court on June 3, 1980. The

Superior Court and the Supreme Court denied Petitioner's request of due process of law in regard to compensation.

Petitioner was never granted a hearing on the merits of their case; both hearings in the case: the hearings on March 18, 1977, December 19, 1978 and January 15, 1979 and the hearing on January 18, 1980 were limited. On the first set of hearings the issue was limited by the Court to Petitioner's claim that he was not served summons to the action. On the hearing held on January 18, 1980 the issue was limited by the Court to Petitioner's claim that respondent had committed fraud.

In *Fuentes* vs. *Shevin*, 407 U.S. 67, at page 80, this court held:

> "The Constitutional Right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. It purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment- to minimize substantively unfair or mistaken deprivation of property, a danger that is especially great when the state seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of government interference".

The Court also stated in *Fuentes*, at p. 86,

> "The Fourteenth Amendment's protection of property, however, *has never been interpreted to safeguard only the rights of undisputed ownership.* Rather it has been read broadly to extend protection to *"any significant property interest"*. (Emphasis Supplied)

*In Eagle* vs. *Koch*, 471 Federal Supp 175. the Court held unconstitutional a law which did not provide appropriate hearing to peedler's before they were deprived of their goods. The Court declared:

> "In sum, local law No. 77 itself has no provision for a hearing upon confiscation of property under exigent circumstances. Therefore, the law does not withstand constitutional attack unless a hearing is otherwise provided".

In the present case, the Court did not allow a hearing to provide due process of law to Petitioner before his being deprived of the house he built in the plot of land and the improvements he made to the land.

In *N.A.A.C.P. v. Alabama* (357 U.S. 449 at page 463) the Court held:

> "It is not of moment that the state has acted soley through its judicial branch, for whether legislative or judicial, it is the application of state power which we are asked to scrutinize".

In *Culp vs. U.S.*, 131 F 2d 293, the Court held that the right not to be deprived of property without due process of law is a fundamental right.

In *Mathew vs. Elridge*, 424 US 319, this Court declared:

> "This Court has consistently held that some form of hearing is required before an individual is finally deprived of a property interest. *Wolff* vs. *Mc Donnel*, 418 US 539, 557-558, see e.g., *Phillips vs. Commissioner*, 283 US 589. See also *Dent vs. West Virginia*, 129 US 114."

A hearing should be ordered to guarantee the Petitioner's right to be compensated for the house he built and for the necessary and useful expenditures made by the Petitioner, with the right of retention of the property until he is indemnified by the Respondent. Petitioner also has the right to be compensated for the luxury or recreation expenditures made in the property if Respondent wishes to keep them.

A Certiorari must be granted in this case so that this Court may review the decision of the Supreme Court of Puerto Rico which disregarded Petitioner's rights to due process of law guarantee by the Fourteenth and Fifth Amendment.

In the alternative that this Court sould sustain the Superior Court decree that Petitioner was a bad faith occupant, the state law, provides right to compensation for the necessary expenditures for the conservation of the land, 31 L.P.R.A. 1468 and for the expenses incurred for luxury or mere pleasure if the Respondent wanted to keep them. 31 L.P.R.A. 1470.

Petitioner's was denied due process of law guaranteed by the Fourteenth Amendment because he was denied a hearing in which his right to compensation even as a bad faith occupant, would be determined.

The State Court did not establish at what time did Petitioner become a bad faith occupant and his right

to be compensated as bonafide occupant prior to becoming a bad faith occupant, 31 L.P.R.A. 1425.

In the present case, the State Court never held a hearing, nor made a determination in regard to the exact time when Petitioner became a bad faith occupant. This is of particular relevance in this case because the Puerto Rico law provides that "good faith is always presumed and any person averring bad faith on the part of the possession is bound to prove the same". 31 L.P.R.A. 1425.

The presumption of good faith protected Petitioner's acts until he was notitied of an adverse claim of possession by Respondent. The expenditures which Petitioner made until the notification of this action are bonafide and therefore, protected by the Statutes which provide compensation to good faith possessors, 31 L.P.R.A. 1164, 1468 and 1469.

In 42 C.J.S. Sec. 7-4(a) Improvements, states:

> "As a general Rule an occupant of land is not a possessor in good faith and hence is not entitled to compensation for improvements *which he makes thereon after he has notice* or *knowledge* of an *adverse title...*" (emphasis supplied.

In 42 Corpus Juris Secundum it also states:

> "Under some statutes, the occupant may recover for improvements which he made in good faith prior to notice of the adverse claim of title as, where he has been a possessor in good faith, he *ceases to be such only from the moment when knowledge or notice of the defects in his title are imparted to him.* And although ordinarily the recovery is limited to improvements made before

> notice of plaintiff's superior adverse claim, where an improvement is substantially completed at the time of receipt of notice of another's claim to the land, and completion is necessary to preserve the improvement and make it useful and valuable, the possessor may complete it and set off the value of the completed improvement". (Emphasis Supplied).

The doctrine which Corpus Juris Secundum exposes is the one that the Supreme Court of Puerto Rico has accepted. That is, that the possessor is considered as bonafide until he is notified of an adverse claim.

In *Díaz* vs. *Delgado*, 41 P.R.R. 827, the court held

> "We do not agree, since one of the premises on which this argument is based is the good faith of the defendants up to the time of the rendition of judgement, *whereas under the law and the jurisprudence, once the judgement* has *been rendered,* such *good faith can only be deemed* to have *existed up to the* day on which defendants were summoned in the action of redemption."

Section 438 of the Civil Code in force says:

> "It is presumed that possession is continued under the same understanding by which it was acquired, until the contrary be proven".

In his commentaries on Article 435 of the former Civil Code, equivalent to Section 438, Supra, Manresa expressed himself as follows:

> "Possessor in good faith converted into possessor in bad faith- Under Article 435 a possessor in good faith becomes a possessor in bad faith from the moment he becomes aware that his possession is wrongful, as stated by

> us when commenting on the said article. Similarly as to a defeated possessor, from the time he is first judicially summoned".

The rules set forth above concerning the possessor in good faith control up to the time such possession is considered lost; thereafter, the Rules relating to the possession in bad faith must be applied. 4 Manresa, Commentaries on the Spanish Civil Code, 2 nd. Ed., p. 274".

It is necessary to conclude that Petitioner must be compensated for the improvements that he made as a bonafide occupant prior to being notified of the present action filed by Respondent. Thereby, Petitioner is entiled to compensation for what Petitioner built prior to being notified of this action, 31 L.P.R.A. 1164, and for the necessary and useful expenses prior to notification of this action, 31 L.P.R.A. 1468, with the right to retain the property until he is duly refunded.

Even as a bad faith possessor the state law provides compensation for Petitioner for certain expenditures. The Civil Code States that "necessary expenses are refunded to every possesor" 31 L.P.R.A. 1468 (Emphasis Supplied).

The State law also provides:

> "A possessor in bad faith... shall only have the right to be reimbursed for the necessary expenses incurred in the preservation of the thing. Expenses incurred in improvements for luxury and pleasure, shall not be refunded to the

possessor in bad faith, but he may remove the objects for which such expenses have been incurred, provided, the thing suffers no injury thereby, and *the lawful possessor does not prefer to retain them and pay the value they may have at the time he enters into possession*". 31 L.P.R.A. 1470 (Emphasis Supplied).

Petitioner was denied the right to compensation for the expenses he incurred as a bona fide possessor and as a bad faith occupant which the law states. Thus, his right to due process before being deprived of his property guaranteed by the Fourteenth and Fifth Amendment of the United States Constitution was violated.

The right to compensation as established by the state law was applied in *Santos Green v. Cruz*, 100 P.R.R. 9, where the Supreme Court of Puerto Rico established:

> "The circumstances set forth show that, upon taking possession of the property before the judicial approval of the lease in question was obtained, Guillermo Cruz was aware of the defect in his title consisting in the absence of said approval, which was required because the owners of the greater part of the property were minors. Therefore, he is a possessor in bad faith of said property. (Section 363 of the Civil Code 31 L.P.R.A. 1424). By virtue thereof his right concerning the improvements he might have made in the property and in regard to the fruits is defined in Article 384 of the Civil Code, 31 L.P.R.A. 1470".

In that case the Court held:

> "Also, the case should be remanded to the trial Court to determine in the light of the evidence adduced, Cruz liability as such possessor in bad faith *as well as apellant -appellee's rights resulting from such condition*". (Emphasis supplied).

Petitioner's right to compensation was violated and thus his property was taken without due process of law as no hearing was held to determine his compensation.

B) *Petitioner has a right to compensation that has been violated by the State Courts constituting this fact unjust enrichment in violation of the due process law clause of the Fifth and Fourteenth amendment of the United States and the rules of equity.*

Initially by the rules of the common law, whoever put improvements on real estate did so at his peril. Even though he acted in good faith and in the honest conviction that the land was his, whenever another party judicially established his title to the land, such party had a right to all the improvements situated upon it without any obligation to compensate the improver. *Thompson* v. *Illinois* 129NE55; *Hall* v. *Boatright* 36SE1001.

Under the rules of the civil laws, norms were more liberal. It permitted one who had made permanent improvements on land in his possession, to compensation for the value of such improvements. *Searl* v. *School District*, 133 VS 553; *Valle* v. *Fleming*, 29 MO 152.

Chancery borrowed the rule of natural equity from the civil law. *Searl* v. *School District*, supra. Where such owner had only an equitable title and was compelled to sue in equity for a recovery of the land, the court refused its aid to the complainant, except on the terms of compensation to the occupant for this improvements, on the principle that he who seeds equity must do equity. *Schleider* v. *Schleider*, 104 ALR 572; *Kester* v. *Bostwick*, 15 SO 2nd 201; *41 Am. Jr.* 2d Section 5, pg. 482-483.

Such is the birth of Betterments acts such as the sections discussed in our first question presented for review, 31 LPRA 1468, 1167, 1164, 1469 and 1470.

They are founded on equitable grounds and proceed on the theory that no one should be made richer at the expenses of another. *Searl* v. *School District*, supra; *Numitor Gold Mine Co.* v. *Katzer*, 256 P 464, *Cleland v. Clark*, 81 NW 1086.

In *Pritchard* v. *Williams* 96SE733, the Court stated:

> "The right to betterments is based on the obvious principle of justice that the owner of the land has not just claim to anything except the land itself. If the claimant, acting under an erroneous but honest and reasonable belief that he is the owner, makes valuable and permanent improvements, *the true owner should not take them without compensation.*" (Emphasis Supplied).

Betterment statutes are remedial in character. *Kester* v. *Bostwick*, supra. They should be liberally construed the purpose of securing an equitable and fair adjustment of the rights of the parties. *Meyers* v. *Canutt*, 46, NW 2d 72; *Stumps* v. *Hornback*, 18 SW 37.

NW 2d 72; *Stumps* v. *Hornback*, 18 SW 37.

Even in jurisdictions where no betterments act such as the ones in the Civil Code of Puerto Rico exist, courts of equity have exercised jurisdiction under general principles of equity for the purpose of affording relief to an occupying claimant in respect to improvements made by him. They have taken cognizance of suits brought by an occupying claimant as plaintiff against the time owner of the land to recover for improvements. See, *Schleider* v. *Schleider*, supra, *Valle* v. *Fleming*, supra, *McKelway* v. *Armour*, 10 NJ Eg. 115, *Rhyne* v. *Sheppard*, 32 SE 2d 316; *Herring* v. *Pollard*, 23 Tenn. 362.

Under the rule of avoiding an unjust enrichment, several cases have been decided whereby an owner will not be permitted to claim improvements if these were erected on the state in good faith and with the tolerance of the rightful owner. See *Goode* v. *Gaines*, 145 VS 141; *Gibson* v. *Herriot*, 55 Ark 85; *Burron* v. *Carlus*, 210 Col 95; *Williams* v. *Vanderbilt*, 145 Ill 238; *Loeb* v. *Conley* 169 SW 575.

Although the silence of the owner under such circumstances does not operate in itself to transfer the title to the improved premises to the improver, equity can compel the owner to either pay for the improvements or surrender his title on receiving compensation. *Carolina C.R., Co.* v. *McCaskitl*, 94 NC 746; 76 ALR 309. Equity acts in these respects on the principle that an unjust enrichment should be prevented. See, *Bright* v. *Boyd*, 1 Story 478; *Olin* v. *Reineche, 168 NE 676; Warwick* v. *Harvey,*, 68 ALR 284 *Pakulski* v. *Ludwiezwski*, 289 NW 231; *Rhyne* v. *Sheppard*, 32 SE 2d 316; *Preston* v. *Brown*, 35 Ohio St. 18.

The rule of unjust enrichment is also founded on the maxim that when one person confers a benefit on another through a mistake, whether of law or fact, the other is liable to make restitutions. See *Duffy* v. *Scott*, 292 NW 273. Generally, the object to the attained is the prevention of unjust enrichment of defendant and the securing for plaintiff of that to which he is justly and in good conscience entitled. *Glandowski* v. *Felczak*, 31 A 2d 718; *Lauffer* v. *Vial*, 33 A 2d 777.

A person who has been unjustly enriched at the expense of another is required to make restitution to the other. *Duffy* v. *Scott*, supra.

Case law has not made necessary that in order to create an obligation to make restitution, that the party unjustly enriched should have been guilty of any tortious or fraudulent act. (*Bill* v. *Gattavara*, 209 2d 457). The question posed in such cases is: Did he, to the detriment of someone else, obtain something of value to which he was not entitled? Such is the questions we pose before this Court today.

It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. See *Franks* v. *Lockwood*, 150 A 2d 215; *Mehl* v. *Norton*, 113 ALR 1055; *US Rubber* v. *Batesburg*, 110 ALR 144; *Duffy* v. *Scott*, supra.

No violation of law or opposition to public policy, directly or indirectly is present in this case.

In *Hill* v. *Waxberg*, 237 F 2d 936 (9th Cir. 1956) the Court discussed the differences between an implied in law and in fact contracts and stated:

> "An implied in law" contract, is a fiction of the law which is based on the maxim that one who is unjustly enriched at the expense of another is required to make restitution to the other. The intentions of the parties have little or no influence on the determination of the proper measure of damages. In the absence of fraud or other tortious conduct on the part of the person enriched, restitution is properly limited to the value of the benefit which was acquired." (ibid at page 939).

See also, *Martin* v. *Campanaro*, 156 F 2d 127 (2d Cir. 1946)

In *Monagas* v. *Vidal*, 170 F 2d 99 (1st. circuit, 1948) the Circuit Court of Appeals for the First Circuit Reviewed a judgement of the Supreme Court of Puerto Rico. Such was the procedure prior to the establishment of the Commonwealth. Review of said decisions since then is done by the Supreme Court of the United States.

In said case the reviewing Court examined the interpretation of Puerto Rican statute by the Supreme Court of Puerto Rico in order to conclude if it was "inescapably wrong" or "patently enormeous". See *Bonet* v. *Texas Co.* 84LED 401; *De Castro* v. *Board of Commissioners* 322 VS 451 "or plainly inconsistent with established principles of local law". (*De Castro* v. *Board*, at page 1384.)

A similar determination should be made in this case as the decision of the Supreme Court of Puerto Rico in the case at bar not only is in disagreement with its own previous decisions, as discussed previously in this unit, but in disagreement with the holdings of the Supreme Court of the United States in *Searl* v. *School District*, supra and others and in disagreement with decisions in other states. See the Court in *Monagas* v. *Vidal*, supra, concluded:

> "It is our function to reverse that Court (the Supreme Court of Puerto Rico) in such a matter only when we are forced to the conclusion that *the result reached below cannot be justified on any logical ground*".

(Emphasis Supplied)

Petitioner believe that such are the facts in the case at bar as the decision is an interpretation of local law that causes an unjust enrichment with prejudice towards Petitioner.

Petitioner thus request that the judgement of the Supreme Court of the Commonwealth of Puerto Rico be reversed and remanded with orders that a hearing be held solely for the purpose of determining Petitioner's right to specific compensation under the sections of the Puerto Rico Civil Code.

C) *The interpretation given by the State Court to the Section 32 LPRA 3561-66 of the Code of Civil Procedure as applied are unconstitutional as it allows for the taking of property without the due process of law guaranteed by the Fifth and Fourteenth Amendments of the Federal Constitution.*

As previously stated, 31 LPRA 1468, established the rights of a good faith possessor. 31 LPRA Section 1167 establishes that when both parties are in bad faith, these are mutually cancelled and both revert to a good faith status, guaranteeing them the rights established in 31 LPRA 1468. Finally 31 LPRA 1468 also established the rights of a bad faith possessor relative to necessary expenses incurred while in possession of the real property.

All these rights and protections of the good or bad faith possessors, established in the Civil Code have been made inapplicable and denied to the Petitioner as he was not afforded a hearing on such matters in the Injunction for the recovery of possession of real properly filed by Plaintiff-Respondent. (32 LPRA Section 3561 to 3566).

Such an interpretation or application of the Injunction procedure make it an unconstitutional statute as it allows for the taking of property without due process of law.

Petitioner has not been able to prove he was a good faith possessor for a specific period of time thereby being due the compensation established in 31 LPRA 1468 relative to the necessary and useful expenses, and accrued value and the right of retention until duly compensated for the expenses incurred and improvements made.

Petitioner was deprived of his due process right through a procedure established in a state statute whereby in addition to the inmediate possession, the Superior Court of Puerto Rico determined through

dismissing all arguments and allegations that there was a need for a hearing to determine the rights of compensation provided in the previously cited sections of the Civil Code. The State Courts refused to provide a hearing thereby restricting the Possessory Injunction (32 LPRA 3561 to 3566) to an unconstitutional procedural statute as it allows for the taking of property without due process of law.

Petitioners specifically refer this court once again to its holding in *Fuentes* v. *Shevin*, supra.

In June 3, 1980 Petitioner filed a Motion of Reconsideration before the Supreme Court of Puerto Rico on the ground that the decision to apply 32 L.P.R.A. Section 3561-3566 of the Code of Civil Procedure as denying rights to Petitioner to be compensated, violated his rights guaranteed by the Fifth and Fourteenth Amendment to the U.S. Constitution.

To apply the Sections of the Code of Civil Procecure as precluding a right to compensation is violative of due process of law. Also this interpretation would go against the right of a bona fide occupant to a retention of the property until he has been compensated for the necessary and useful expenses, 31 L.P.R.A. 1468 and for the buildings he has done, 31 L.P.R.A. 1164.

Since bona fide occupant has a right to the retention of the property until he has been payed for the necessary and useful expenses and for the buildings he has done on the land, 31 L.P.R.A. 1468 and 1164, the Court is violating Petitioner's right, because he was ordered to vacate the property without being

payed the improvements he made as a bona fide occupant.

The decision in this case goes against the Petitioner's rights, which the State Statute recognizes to bona fide, and bad faith occupant's and violates the Fifth and Fourteenth Amendment to the United States Constitution.

## IV. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

The right to due process of law guaranteed, by the Fourteenth Amendment Section 1 of the United States Constitution which states: "nor shall any state deprive any person of life, liberty or property, without due process of law..." U.S.C.S. •Constitution Amendment 14, page 444.

The right to due process of law guaranteed by the Fifth Amendment to the United States Constitution which states: "nor shall any person... be deprived of life, liberty or property, without due process of law". U.S.C.A. Constitution Amendment 5, page 4.

In the state law, the Civil Code statutes:

*Article 300*-- "when there has existed bad faith, not only on the part of the persons who built, sowed or planted on another's land but also on the part of the owner of such land the right of both shall be the same as though both had acted in good faith" 31 L.P.R.A. 1167, page 46.

*Article 297*-- "the owner of the land which has been built upon in good faith shall have the right to appropriate as his own the work, by previously pay-

ing to the owner of the work the cost of materials and labor, or the cost of reproducing the work at the time the owner of the land exercised his right, deducting depreciation whichever is greater to compel the person who constructed to pay the value of the land" 31 L.P.R.A. 1164, page 38.

*Article 382*-- "necessary expenses are refunded to every possessor; but only the possessor in good faith may retain a thing until such expenses are made good to him; useful expenses are refunded to the possessor in good faith with the same right to retention, it being at the option of the party who has defeated him in his possession to refund the amount of the expenses or to pay the increase in the value of the thing in consequence of such expenses". 31 L.P.R.A. 1468, page 118.

*Article 383*-- "expenses incurred purely for luxury or mere pleasure are not returnable to the possessor in good faith but he may remove the ornaments with which he embellished the principal thing if it suffer no injury thereby, and if his successor in the possession does not prefer to refund the amount expended". 31 L.P.R.A 1469, page 120.

*Article 364*-- "good faith is always presumed, and any person averring bad faith on the part of a possesor is bound to prove the same" 31 L.P.R.A. 1425, page 104.

*Article 384*-- "a possessor in bad faith... shall only have the right to be reimbursed for the necessary expenses incurred in the preservation of the thing. Expenses incurred in improvements for luxury and pleasure shall not be refunded to the possessor in bad faith but he may remove the objects for which such

expenses have been incurred, provided the thing suffers no injury thereby, and the lawful possessor does not prefer to retain them and pay the value they may have at the time he enters into possession". 31 L.P.R.A. 1470, page 120.

*Article 690*-- When injunction granted

An injuction for the retention or recovery of material possession of real property shall be granted on petition of the interested party provided he shows to the satisfaction of the court that he has been disturbed in his possession or tenancy of said property by acts showing intention of disturbing or depriving him of such possession, or when he has already been deprived of said possession or tenancy. 32 LPRA 3561 page 731.

*Article 691*-- Contents of complaint

The complaint shall be drafted and sworn to, pursuant to the provisions of the Code of Civil Procedures and shall set forth:

(1) That the complainant was within the year preceding the filing of the complaint in the actual possession of the property described in said complaint if it is sought to recover it, and was and is in possession thereof if it is sought to retain it.

(2) That he has been disturbed or deprived of the said possession or tenancy.

He shall also describe clearly the facts constituting the disturbance or deprivation and whether said acts were committed by the defendant or by some other person by order of the said defendant. 32 LPRA 3562. page 739.

*Article 692*-- Date for hearing; summons

The court shall set a date for a hearing upon such complaint, which date shall be within the following fifteen days, and the defendant shall be summoned at least eight days prior to the date set for such hearing. 32 LPRA 3563, page 743.

*Article 693*-- *Motions*

All motions or demurrers shall be filed and heard at the time of said hearing. 32 LPRA 3564 Page 743.

*Article 694*-- *Judgement; costs*

The court shall render judgment without undue delay. Costs shall be taxed against the party against whom judgment is rendered. 32 LPRA 3565 Page 743.

*Article 695*-- *Form of injunction*

Such injunction shall direct that the plaintiff be restored to possession and shall require the distuber to abstain in future from the commission of such acts, or of others which show the same intent, and shall warn him that disobedience of such injunction shall constitute contempt of court. 32 LPRA 3566 Page 747.

## V. STATEMENT OF THE CASE

On June or July of 1974 Respondent occupied a plot of land in a suburb of Guaynabo, Puerto Rico known as Villa Isleña.

Respondent occupied the land as a squatter because she was not the lawful owner of this land and has never claimed to be such. Respondent occupied that land for approximately 3 to 4 weeks to a month and built a shack there and left four posts of wood in the

land. She had a problem with her son and left the plot of land, on 1974.

On October 1976, the Petitioner occupied a portion of the plot of land that the Respondent had occupied in 1974 but had left three weeks to a month later. Petitioner inmediately built a room which he later extended, where he lives with his family. Petitioner occupied the plot of land also as a squatter in the belief that the land was vacant because he did not find any structure or house in that land. The only thing that was left in the land were pieces of wood that were laying among the grass and the untilled plot of land.

Petitioner continued building and improving the plot of land and made a house of wood and concrete consisting of three bedrooms, two baths, a kitchen, a porch, a dinning room of an approximate value of $10,000, where he actually lives with his family.

On October 21, 1976, Respondent filed an injunction against the Petitioner claiming that the Petitioner was disturbing her occupant rights to the plot of land and claiming that the Petitioner had built on top of the post that she had left on the plot of land when she left on 1974.

On December 1st., 1976 the Petitioner was held in the default because he did not answer the injunction filed by Respondent.

On March 18, 1977 a hearing on default was held in which Respondent was the sole witness.

On August 3, 1977 the Superior Court of Puerto Rico issued a decree against the Petitioner ordering

him to vacate the land and to abstain from disturbing Respondent's right as occupant of the land.

This sentence was never notified to the Petitioner because it was returned from the Guaynabo Post Office as unclaimed to the Superior Court.

On March 27, 1978 the Superior Court of Puerto Rico ordered the Petitioner and his family to vacate the plot of land.

On August, 1978 Petitioner wife's was notified by the Court Marshall that the Petitioner and his family had until September 6, 1978 to vacate the land.

On September 1st., 1978 Petitioner filed a Motion to strike the order to vacate and the decree against him challenging the summons on the ground that he was never notified of the complaint.

On December 19, 1978 and January 15, 1979 hearings were held in regard to the motion filed by Petitioner.

On February 20, 1979, the Superior Court decreed that both parties were squatters and denied the motion to strike the decree and order to vacate against Petitioner.

On July 23, 1979 Respondent moved the Court for an order to vacate against Petitioner.

On August 1st., 1979, Petitioner filed opposition to motion to vacate of Respondent in which he claimed his rights to compensation for what he had built in the land.

Petitioner claimed that the decree of the Superior Court was erroneous and alleged that Petitioner had a right to compensation before he vacated the land

guaranteed by the Civil Code Statutes and the doctrine of unjust enrichment.

On August 13, 1979 the Superior court sustained its decree of February 20, 1979.

On September 24, 1979 the Petitioner filed writ of Certiorari in the Puerto Rico Supreme Court alleging right to compensation guaranteed by the Civil Code Statutes and the doctrine of unjust enrichment.

On October 14, 1979 Respondent filed opposition to Certiorari.

On October 18, 1979 the Puerto Rico Supreme Court denied Certiorari.

On December 4, 1979 the Petitioner filed a motion to strike order of March 27, 1978 and decree of the Superior Court of August 3, 1977 in which he claimed his rights to due process under the Puerto Rican constitution Art. II Section VII to be compensated before depriving him of property.

Petitioner claimed that Respondent had commited fraud by claiming that Petitioner had not built any structure in the plot of land knowing this to be false. Also that Petitioner was never notified of the Motion to default or of the default order of the Court. Petitioner claimed that he was never notified of the decree of the Court of August 3, 1977 and that the decree was not final because of this.

Petitioner claimed he had a right to due process of law under the State Constitution which would determine the compensation for the house he had built in the plot of land and from all the improvements he had done to the land and for the necessary and ordinary expenditures he had made for the conservation of

the land. Petitioner requested a stay of the order to vacate which would come in effect on December 7, 1979.

The Superior Court did not order the stay to the order to vacate.

On December 10, 1979 the Petitioner filed an Appeal before the Puerto Rico Supreme Court requiring the Supreme Court to review the decision of the Superior Court not to stay the order to vacate. In this Appeal Petitioner claimed his right to due process of law under the Puerto Rico constitution had been violated. He claimed that before depriving him of his house he should be compensated.

On December 20, 1979 the Puerto Rico Supreme Court denied the Appeal.

On December 27, 1979 Petitioner requested the Superior Court to hold a hearing in the Motion to vacate the order and decree filed on December 4, 1979.

On January 18, 1980 a hearing was held to consider the Motion to vacate the order and decree.

On February 28, 1980 the Superior Court of Puerto Rico denied the Motion to vacate the Order and decree.

On March 26, 1980 the Petitioner filed a writ of Review before the Supreme Court of Puerto Rico which requested the court to Review the order entered by the Superior Court on February 28, 1980. In this writ of review again Petitioner claimed his right to due process under the State Constitution before being deprived of his property.

On April 17, 1980 the Supreme Court of Puerto Rico denied the writ of Review filed by Petitioner.

On May, 1, 1980 the Petitioner filed a Motion for Reconsideration.

On May 15, 1980 the Supreme Court of Puerto Rico denied the Motion for Reconsideration.

On June 3, 1980 Petitioner filed a Motion for Reconsideration on the grounds that the application of the State Court of the Code of Civil Procedures 32 LPRA 3561-3566 violated Petitioner's right to due process of law under the United States Constitution. That Petitioner was denied a hearing before being ordered to vacate the land and he had a right to compensation.

Petitioner never was granted a hearing in which his right to compensation for the improvements he made in the land was determined. This constitutes a violation of Petitioner's right to due process of law guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution, which prohibits the state from depriving a person of his property without due process of law. The State Court interpretation of 3561-3566 of the Code of Civil Procedure, 32 L.P.R.A. 3561-3566 violates the Fifth and Fourteenth Amendment of the United States Constitution inasmuch as it allows the taking of property without due process of law. Also it constitutes an unjust enrichment for Respondent.

The disregard by the Supreme Court of Puerto Rico of the due process of law guaranteed to Petitioner by the United States Constitution and the patently erroneous interpretation of the Puerto Rican statute by the Supreme Court of Puerto Rico make it

necessary for this Court to reverse and remand with orders that a hearing be held were Petitioner's right to due process be guaranteed.

## VI. ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

As previously cited in this Petition the appellate jurisdiction of this Court is invoked under 28 USC, Section 1258 relative to reviews of judgments from the Supreme Court of Puerto Rico.

For the consideration of writs of Certiorari, the requirements set forth for the jurisdiction of this Court in 28 USC. Section 1257 are the same than for Section 1258, therefore, case law for Section 1257 squarely applies to Section 1258.

Petitioner claims that a right not to be deprived of his property without the due process of law guaranteed by the Fifth and/or the Fourteenth Amendment to the Federal Constitution. This claim by Petitioner is accompanied by a second claim whereby Petitioner alleges that a state statute, to wit Puerto Rico Possessory Injunction statute 32 L.P.R.A., Section 3561-3566, as applied in this case, is unconstitutional as it deprives Petitioner of his property without a hearing, thereby, said Injunction statute being repugnant to the Constitution of the United States. This second claim falls also under the situation where this Court has jurisdiction, by writ of Certiorari, to review a judgement of a state court.

A statute of Puerto Rico was held to be a "State Statute" for purposes of appeal jurisdiction in *Calero*

*Toledo* vs. *Pearson Yacht Leasing Co*, 416 U.S. 663 and *Examining Board of Engineers* vs. *Flores de Otero*, 426 U.S. 572. This case involves a Puerto Rican statute.

The jurisdiction in this case is averred in Petitioner's claim that a state statute offends federal law and, thus, that a right under federal law has been rejected.

Jurisdiction lies in the Supreme Court even though the state Court is not explicit in overuling a timely challenge on federal grounds to the validity of a state statute. See, *Sargent* vs. *Texas*, 318 US 418. Certiorari under Section 1257 (3) is the only proper method of seeking review of whatever federal issues when a state court refuses to reach a challenge to the validity of a state statute. See *Garrity* vs. *New Jersey* 385 US 493. Such is the situation previously described, in the case at bar.

It is also essential to the jurisdiction of the Supreme Court under Section 1257 and 1258 that a substantial federal question not devoid of merit has been properly raised. Nor can it be so explicitly foreclosed by prior decisions as to leave no room for real controversy.

In the present action a federal substantial claim has been raised, deprivation of property without due process, it is not devoid of merit as it encompasses the deprivation of the sole property of Petitioner and his whole lives savings and is an issue which this Court specifically has never addressed itself to.

Lastly a concise discussion of the "drawn in question" requirement proceeds.

The doctrine is that the "drawn in question" requirement of Section 1257 is met where the validity of the statute is "drawn in question in a manner directly bearing on the merit of the action". See, *Cox Broadcasting Corp.* vs. *Cohn*, 420 U.S. 469. Petitioner has met with this requirement while discussing the questions presented to this Court for review.

This Court has also invoked its review power over state courts determinations on the basis of a "plain error", of federal constitutional proportions, that was not raised or decided below. See, *Vachon* v. *New Hampshire*, 414 US 478 and *Thomson* v. *City of Louisville*, 362 US 199 and specifically *Monagas* v. *Vidal*, 170 Fed. 2d. 99 where the Court of Appeals acting as a reviewing Court of the Supreme Court of Puerto Rico, said:

> "...the narrow question for us under the historic rule reaffirmed and restated by the Supreme Court of the United States in *De Castro* vs. *Board of Commissioner*, (322 US 451) is whether the decisions of the Supreme Court of Puerto Rico... (are) "inescapably wrong" or "patently erroneus or plainly inconsistent with established principles of the local law". See also, *Bonet* vs. *Texas*, 84 L Eds. 401.

No more but definitely no less is Petitioners request from this Supreme Court today: a finding that the Supreme Court of Puerto Rico decided wrongly this case and that its decision is plainly inconsistent with sections 1167, 1164, 1468, 1469, 1425 and 1470 of the Puerto Rican Civil Code, 31 L.P.R.A. 1167, 1164, 1468, 1469, 1425, and 1470, in addition to being repugnant to the due process clause of the Fifth

and/or Fourteenth Amendment to the Federal Constitution.

For the reasons stated therein, the Petitioner Respectfully moves the Court to review by Writ of Certiorari the order and decree of the State Court.

Respectfully Submitted.

María Dolores Fernos, *Esquire*
Georgina Candal, *Esquire*
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APENDICE I

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: 76-2974

SOBRE: ACCION CIVIL
(Injunction Posesorio)

EPIFANIA PEREZ GUZMAN,
DEMANDANTE

VS.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADOS

SENTENCIA

A la vista del presente caso señalado en rebeldía para el día 18 de marzo de 1977, compareció la demandante, EPIFANIA PEREZ GUZMAN, con su abogado el Lcdo. Antonio Cajigas Llamas.

De los autos se desprende que los demandados fueron debidamente emplazados, no contestaron la Demanda y tampoco comparecieron a la vista del presente caso.

Oída la prueba testifical ofrecida por la demandante el Tribunal encuentra probadas las alegaciones de la Demanda y en su consecuencia dicta la siguiente:

SENTENCIA

Se ordena a los demandados, BASILIO VEGA VEGA y LUIS SANTIAGO ORTEGA que dentro del término de veinte (20) días de notificársele esta

Sentencia, desalojen la propiedad de la demandante, EPIFANIA PEREZ GUZMAN y se abstengan de cometer actos de dominio en dicha propiedad bajo apercibimiento de desacato al Tribunal y además se condena a cada uno de los demandados, a pagar la suma de $250.00 en concepto de honorarios de abogado la cual deberán consignar en la Secretaría del Tribunal a nombre del Lcdo. Antonio Cajigas Llamas dentro del término de veinte (20) días de notificársele esta Sentencia.

DADA en Bayamón, Puerto Rico, a 3 de agosto de 1977.

REGISTRESE Y NOTIFIQUESE.

JOSE F. RODRIGUEZ RIVERA
JUEZ SUPERIOR

APENDICE II

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: 76-2974 (504)
SOBRE: ACCION CIVIL
(Injunction Posesorio)

EPIFANIA PEREZ GUZMAN,
DEMANDANTE

VS.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADOS

ORDEN DE LANZAMIENTO

Vista la Moción de la Parte Demandante en el caso del epígrafe en la cual solicita el lanzamiento de los demandados Luis Santiago Ortega y Basilio Vega Vega y sus familiares, empleados y/o cualesquiera persona o personas que ocupen la propiedad objeto de la Demanda del epígrafe; examinados los autos de este caso y la Ley aplicable, el Tribunal declara CON LUGAR la referida Moción y en su consecuencia ordena el lanzamiento de los demandados Luis Santiago Ortega y Basilio Vega Vega y sus familiares, empleados y/o cualesquiera persona o personas que ocupen la propiedad siguiente:

> "Parcela de terreno con una cabida superficial de QUINIENTOS METROS (500) CUADRADOS, localizada en Villa Isleña en la Carretera Estatal Número Ochocientos Treinta y Cinco (835) del Barrio Guaraguao del término municipal de

Guaynabo, Puerto Rico, en lindes por el NORTE en una distancia de Treinta y dos puntos sesentidos (32.62) metros con la Carretera o camino vecinal pavimentada; por el SUR en una distancia de Nueve punto Cuarenticinco (9.45) metros con la Familia Alvarado Colón; por el ESTE en una distancia de Veintisiete punto Trece (27.13) metros con Angel F. Candelaria y por el OESTE en una distancia de Ocho punto Veintitres (8.23) metros con un camino vecinal pavimentado. En esta parcela hay construídas unas estructuras de madera techadas de zinc dedicadas a uso residencial."

Esta orden quedará sin efecto en el caso de que la parte demandada haya desalojado la propiedad objeto de la demanda y haya pagado las costas y gastos de este procedimiento así como los honorarios de abogado que fijó el Tribunal.

DADA en Bayamón, Puerto Rico, a 27 de marzo de 1978.

REGISTRESE Y NOTIFIQUESE.

JOSE F. RODRIGUEZ RIVERA
JUEZ SUPERIOR

APENDICE III

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: 76-2974
SOBRE: ACCION CIVIL
(Injunction Posesorio)

EPIFANIA PEREZ GUZMAN,
DEMANDANTE

VS.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADOS

MANDAMIENTO AL ALGUACIL
PARA QUE CUMPLIMENTE
ORDEN DE LANZAMIENTO

AL SR. ALGUACIL DEL TRIBUNAL:

Con fecha de enero de 1978, este Honorable Tribunal ha dictado la Orden que a continuación se transcribe:

"Vista la Moción de la Parte Demandante en el caso del epígrafe en la cual solicita el lanzamiento de los demandados Basilio Vega Vega y Luis Santiago Ortega, sus familiares, empleados y/o personas que ocupen la propiedad mencionada en la Demanda del epígrafe; examinados los autos del caso y la Ley aplicable, el Tribunal declara CON LUGAR la referida Moción y en su consecuencia ordena el lanzamiento de los demandados Basilio Vega Vega y Luis Santiago Ortega, sus familiares, empleados y/o persona o personas que ocupen la propiedad siguiente:

"Parcela de terreno con una cabida superficial de QUINIENTOS METROS (500) CUADRADOS, localizada en Villa Isleña en la Carretera Estatal Número Ochocientos Treinta y Cinco (835) del Barrio Guaraguao del término municipal de Guaynabo, Puerto Rico, en lindes por el NORTE en una distancia de Treinta y dos puntos sesentidos (32.62) metros con la Carretera o camino vecinal pavimentada; por el SUR en una distancia de Nueve punto Cuarenticinco (9.45) metros con la Familia Alvarado Colón; por el ESTE en una distancia de Veintisiete punto Trece (27.13) metros con Angel F. Candelaria y por el OESTE en una distancia de Ocho punto Veintitres (8.23) metros con un camino vecinal pavimentado. En esta parcela hay construídas unas estructuras de madera techadas de zinc dedicadas a uso residencial."

Esta orden quedará sin efecto en el caso de que la parte demandada, sus familiares, empleados o persona o personas que ocupaban la propiedad objeto de la demanda hayan desalojado la misma y hayan pagado los costos y gastos de este procedimiento más los honorarios de abogado que fijó el Tribunal.

DADA en Bayamón, Puerto Rico a 27 de marzo de 1978.

REGISTRESE Y NOTIQUESE.

JOSE F. RODRIGUEZ RIVERA
JUEZ SUPERIOR

POR TANTO, Usted, Sr. Alguacil, de este Tribunal, es requerido por la presente para que dé fiel cumplimiento a la orden antes descrita y proceda

con el correspondiente lanzamiento en el caso del epígrafe.

DADA en Bayamón, Puerto Rico, a 5 de abril de 1978.

REGISTRESE Y NOTIQUESE.

MARIA MORALES DE POU
SECRETARIA

APENDICE IV

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: CS 76-2974
SOBRE: ACCION CIVIL
(Inj. Pos.)

EPIFANIA PEREZ GUZMAN,
DEMANDANTE

VS.

BASILIO VEGA VEGA Y OTRO,
DEMANDADOS

RESOLUCION

En este caso ambas partes son invasores confesos de propiedad ajena. La parte demandante acudió al Tribunal mediante el recurso de injunction posesorio para que se ordenara a los demandados a desalojar el terreno que alegadamente invadieron a quien antes lo habían también invadido. Emitimos sentencia protegiendo la posesión de la demandante. Comparecieron más tarde los demandados pidiendo que dejásemos sin efecto la sentencia en base a que no fueran emplazados debidamente y a que uno de los demandados no fue debidamente traído al pleito. Señalamos el incidente para vista en la cual se adujo abundante prueba testifical.

Para la fecha de la vista uno de los demandados, Basilio Vega Vega, ya no ocupaba el terreno en controversia. En cuanto al otro demandado revela la prueba ante el Tribunal que se le conoce como Luis y

como Wiso y fue uno de los que invadió y construyó una casucha en el sitio objeto de la demanda. Comparece ahora en el presente incidente alegando ser Luis Santiago Ortega. No puede negar, sin embargo, que es la misma persona demandada bajo el nombre de Luis Santiago Ortega, conocido por Guiso.

Nos mereció completo crédito el testigo Javier Fragoso, quien dijo llevar 25 años en labores relacionadas con el emplazamiento de personas y otras funciones en los Registros de Propiedad. Aseveró que emplazó debidamente a los dos demandados. Detalló su viaje a los terrenos de la invasión y la forma en que entregó las notificaciones. Las demás circunstancias de la prueba nos convencen aún más de que efectivamente se cumplió con la Ley en el emplazamiento de los demandados y de que no tienen razón en sus presentes alegaciones.

Se deja en todo su efecto y vigor la sentencia y se deniega la moción para dejar sin efecto lo actuado.

Regístrese y Notifíquese.

DADA en Bayamón, Puerto Rico, hoy día 20 de febrero de 1979.

JOSE F. RODRIGUEZ RIVERA
JUEZ SUPERIOR

APENDICE V

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: 76-2974 (505)
SOBRE: Injunction Posesorio

EPIFANIA PEREZ,
DEMANDANTE

VS.

BASILIO VEGA Y
LUIS SANTIAGO ORTEGA
C/P GUISO,
DEMANDADOS

RESOLUCION

Para mayor claridad del incidente que nos toca resolver en el presente caso se hace necesario una relación del peregrinaje judicial de éste. Veámos.

El 27 de octubre de 1976 radicó la demandante una acción de "Injunction Posesorio" contra los demandados, alegando que estos le invadieron la posesión del predio de terreno que en la demanda se describió. Es procedente señalar que la alegada ocupación de dicho predio por la parte demandante advino también mediante una invasión de terrenos, por lo que nos encontramos frente a una alegada invasión contra otro invasor.

Se emplazó a ambos demandados el 13 de noviembre de 1976. Por no haber comparecido al pleito a responder el 1 de diciembre de 1976. El 18 de marzo de 1977 se vió la vista en rebeldía y se dictó sentencia el 3

de agosto de 1977; copia de la notificación se archivó en autos el 26 de octubre de 1977.

El 27 de marzo de 1978 se expidió orden de lanzamiento para que se desalojara a los demandados de la propiedad. El 1 de septiembre de 1978, fecha para la cual aún no se había llevado a cabo el desalojo, y habiendo transcurrido casi un año de la notificación de la sentencia, radicaron los demandados un escrito que titularon "Moción para Dejar sin Efecto Moción (sic) y Otros Extremos", en la que se pide al Tribunal que deje sin efecto la sentencia al amparo de la Regla 49.2, aduciendo que el Tribunal no adquirió jurisdicción sobre las partes. No se adujo ningún otro argumento para que se dejara sin efecto la sentencia. Se acompañó la Moción con declaraciones de los demandados negando *bajo juramento* que conocieran del caso antes del trámite de desalojo. Luego de celebrarse una vista, en la que las partes aportaron pruebas sobre la contención de cada cual, mediante Resolución del 20 de febrero de 1979 el Tribunal resolvió que los demandados fueron válidamente emplazados por lo que dejó en efecto la sentencia. Nada hizo la parte demandada en torno a la Resolución del Tribunal hasta que se comienza a gestionar nuevamente el lanzamiento de los demandados, seis meses después de la fecha de dicha Resolución. Se solicitó entonces que no se expidiera nueva orden de lanzamiento, a lo que el Tribunal dispuso No Ha Lugar, mediante Orden del 13 de agosto de 1979. Se recurrió al Tribunal Supremo en Certiorari, y éste no expidió el auto. (Resolución del 18 de octubre de 1979).

El 4 de diciembre de 1979 vuelven los demandados a radicar otra "Moción de Relevo de Sentencia". Se aduce para ello una serie de fundamentos, entre ellos, que la demandante "cometió fraude al Tribunal al declarar falsamente que se encontraba en la posesión real del inmueble objeto de la controversia...". Es esta la Moción que está ahora para nosotros resolver.

Simultáneamente con la radicación de esta nueva solicitud de relevo de sentencia se pidió la inhibición en el caso del Hon. José P. Rodríguez Rivera. Mediante Resolución y Orden del 6 de diciembre de 1979, el referido juez dispuso que aunque "los fundamentos para la recusación son frívolos... como están formulados dentro de un espíritu de pequeña intriga..." se inhibía en el caso. Así llegó a nuestra atención.

El 11 de diciembre de 1979 los demandados radicaron ante el Tribunal Supremo un escrito que titularon "Apelación", con copia ante esta Sala del Tribunal Superior[1]. Se apeló aparentemente de una determinación inexistente, pues se hace referencia a una alegada sentencia o determinación en el caso, por el Hon. Juan José Ríos Martínez, que se aduce pone fin a la cuestión litigiosa, pero que ni se había dictado a aquella fecha ni se dictó luego. El 20 de diciembre de 1979 el Tribunal Supremo dispuso "no ha lugar" al escrito de apelación.

Señalamos una vista en torno a la Moción bajo la Regla 49.2 para el 18 de enero de 1980. En la misma limitamos el planteamiento al alegado fraude al Tribunal, por entender que carecíamos de jurisdicción

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[1] Se hizo contrario a lo preceptuado en la Regla 53.1 de Procedimiento Civil.

para considerar los demás fundamentos alegados en la Moción. En dicha vista ambas partes ofrecieron prueba en torno a sus sendas contenciones, quedando sometido el incidente, sujeto solo a un memorando de autoridades que se requirió que cada parte rindiera en o antes del 15 de febrero de 1980. Ambas partes lo radicaron fuera de término; el demandante lo hizo el 19 de febrero de 1980; el demandado el 25 de febrero de 1980.

Luego de la vista en la que ya el incidente había quedado sometido, la parte demandada solicitó la transcripción de unas vistas anteriores "para poder probar dicho fraude" de la parte demandante. Al pasar juicio sobre esta solicitud señalamos que el incidente había quedado sometido con la prueba presentada en la vista. Solicitó también la parte demandada mediante otro escrito, la reconsideración a la admisión en evidencia de algunos documentos, los que acompañó en su moción. Sin entrar a considerar la propiedad de tal solicitud en esa etapa de los procedimientos, que equivale prácticamente a una invitación a que abramos más las puertas al anarquismo procesal que ya parece haberse asomado en este caso, dispusimos No Ha Lugar a la misma.

Merece hacerse mención que en la vista del 18 de enero de 1980 se radicó por los abogados de la parte demandada, y fue declarada con lugar, una moción renunciando a la representación legal de Basilio Vega, luego de aclarar que la solicitud para la que señaló la vista se hacía solamente en nombre de otro demandado. Se estipuló que el Sr. Basilio Vega ya había abandonado la propiedad objeto del pleito.

La propia prueba de la parte demandada en la vista antes indicada no establece la existencia de fraude al Tribunal que alega dicha parte. Con el testimonio de uno de sus testigos, el Sr. Rafael López, quedó establecido que cuando llegó el demandado Wilfredo Santiago, que es el mismo demandado Luis A. Santiago (conocido por Guiso), a la propiedad, había en el solar una caseta de madera como de un cuarto, que se estableció era de la demandante. Tenía allí herramientas para construir en el solar y equipo de cocina. Además de la caseta había instalados los denominados "socos" para la edificación. El propio demandado expresó que llegó al solar en octubre de 1976 (mes en que se radicó originalmente el pleito); que la demandante enseguida lo llevó a la Corte de Distrito de Guaynabo. Allí el Juez Toro le indicó a la demandante que tenía que radicar "Injunction". Así lo hizo, y mientras tanto el demandado siguió construyendo allí, a sabiendas de que había una acción pendiente en el Tribunal, pues había sido debidamente emplazado.

La Regla 49.2 de Procedimiento Civil es un mecanismo para abrir camino a la justicia *(Sen. de Bravo González* v. *Secretario de Hacienda*, 106 D.P.R. 672). No es, sin embargo, un medio para conseguir que se extiendan términos de revisión de una Sentencia, que es en esencia lo que se pretende ahora en este caso (Veáse *Figueroa* v. *Banco de San Juan*, resuelto el 16 de mayo de 1979, 79 J.T.S.; 46 *González* v. *Chaves*, 103 D.P.R. 478; *Rodríguez* v. *Tribunal Superior*, 102 D.P.R. 290). El uso de este mecanismo procesal tiene unas limitaciones que impone la propia Regla.

Dispone la citada Regla, en la parte que ahora nos concierne que:

> "...Esta regla no limita el poder del tribunal para (a) conocer de un pleito independiente con el propósito de relevar a una parte de una sentencia, orden o procedimiento; (b) conceder un remedio a una parte que en realidad no hubiera sido emplazada; y (c) dejar sin efecto una sentencia por motivo de fraude al tribunal".

No tenemos ante nosotros la situación que contempla la parte (a) del párrafo transcrito. La situación cobijada en la parte (b) ya fue adjudicada al considerar el Tribunal la anterior Moción de Relevo de Sentencia. Ello dejaría disponible para este incidente únicamente lo cubierto bajo la letra (c), el llamado fraude al Tribunal.

En estos casos no impera la limitación del término de seis meses *(G.A.C. Finance Corp.* v. *Rodríguez,* 102 D.P.R. 213; *Municipio de Coamo* v. *Tribunal Superior,* 99 D.P.R. 932).

El demandado pretende sostener el alegado fraude amparándose en que la demandante no trajo la verdad a la consideración del Tribunal en la vista del caso. Para ello trae a nuestra atención unos testimonios que no merecen crédito alguno, en torno a las expresiones falsas de la demandante. Lo único que queda en claro de la prueba es que el demandado, quien por su negligente desatención al ser emplazado y por su claro menosprecio se indiferencia al trámite judicial, se ve en las puertas del desalojo, trata ahora de buscar el refugio del Tribunal, al que desatendió al seguir construyendo con mediada mala fe. Se olvida que en la realización de

la justicia no se puede santificar maniobras como la llevada a cabo por él *(Soriano Tavárez* v. *Rivera Anaya,* resuelto el 30 de abril de 1979, 79 J.T.S. 42*)*.

Confunde el demandado (en su memorando de autoridades) el concepto de domicilio con el de posesión. Pretende asirse, además, al argumento de la equidad y reclamar, por primera vez en esta etapa, el derecho a que se le compense por lo edificado, amparándose en disposiciones de ley que gobiernan el derecho de accesión. Aunque la mala fe en el caso ha quedado claramente señalada, tampoco tiene el demandado a su favor estos argumentos en una Moción de relevo de sentencia.

Aduce también el demandado que su desalojo constituiría una privación de su propiedad sin el debido proceso de ley. Aunque también ha sido traída tardíamente esta defensa, su frivolidad es manifiesta. A él se le dio oportunidad de traer al Tribunal todas las defensas que creyera tener disponible a su favor. Prefirió la desatención. No puede ahora lamentarse. "Resulta rídiculo que personas que invaden ilegalmente y sin derecho alguno inmuebles ajenos planteen como error... que se les privó del disfrute de su propiedad..." *(Catalán González* v. *García,* 104 D.P.R. 380, 386*)*.

Sobre lo que constituye fraude al Tribunal, que es lo único que nos toca aquí resolver, merece destacarse lo que se dijo en *Municipio de Coamo,* supra (p. 939)

> "La Regla 49.2 contempla dos clases de fraude. Los distingue estableciendo que en el caso de fraude entre partes la moción de relevo debe ser presentada dentro del término de seis meses. En los casos de fraude al tribunal puede éste dejar sin

efecto la sentencia sin limitación de tiempo alguno. La distinción entre los dos tipos de fraude la hace Moore de la siguiente forma: 'Fraude al tribunal, creemos, debe cubrir sólo aquellos tipos de fraude cuyo efecto o cuya intención es mancillar al tribunal como tal, o que es fraude perpetrado por oficiales del tribunal, de tal forma que la maquinaria judicial no pueda ejercer como de costumbre su imparcial labor de juzgar los casos que se le presentan para adjudicación. Fraude inter partes, sin más, no ha de considerarse fraude al tribunal, sino que el remedio se dejará para una moción presentada bajo la Regla 60 (b) (3) o a acción independiente".

Nuestra jurisprudencia ha reconocido que constituye fraude al tribunal 'la preparación, el uso y la presentación en la vista del caso de prueba falsa obtenida por la parte adversa por medio del soborno y la instigación al perjurio...' "

Nada hay en el presente caso que permita concluir que la demandante incurrió en fraude al Tribunal.

Se declara sin lugar la Moción de Relevo de Sentencia.

NOTIFIQUESE.

Dada en Bayamón, Puerto Rico, a 28 de febrero de 1980.

ENRIQUE RIVERA SANTANA
JUEZ SUPERIOR

APENDICE VI

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL GENERAL DE JUSTICIA
TRIBUNAL SUPERIOR
SALA DE BAYAMON

CIVIL NUM.: 76-2974 (505)
SOBRE: Injunction Posesorio

EPIFANIA PEREZ

VS.

BASILIO VEGA Y LUIS SANTIAGO ORTEGA
C/P GUISO

NOTIFICACION

Lic. Georgina Candal

Apartado 727, Guaynabo, Puerto Rico 00657
Ljc. Antonio Cajigas Llanos,
Rodríguez Oquendo Esq. 2B-#142,
Urb. Severo Quiñones, Carolina, Puerto Rico 00630

Señores:

Notifico a ustedes que en relación con ** Moción de Reconsideración** radicada por el demandado Wilfredo Santiago el Hon. Juez dictó la Orden que se transcribe a continuación, la cual ha sido archivada en autos en el día de hoy:
Orden: "No Ha Lugar".

ENRIQUE RIVERA SANTANA
JUEZ SUPERIOR

Bayamón, Puerto Rico, a 12 de marzo de 1980.

ROSA M. CARRILLO
SECRETARIA

CERTIFICO: Que envié por correo de esta notificación a las partes arriba mencionadas a sus direcciones indicadas en la misma, hoy 13 de marzo de 1980, habiendo archivado en los autos copia de esta notificación en 13 de marzo de 1980.

Bayamón, Puerto Rico, a 13 de marzo de 1980.

NELLY CRUZ CORE
SECRETARIA AUXILIAR

APENDICE VII

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

NUM. 0-79-455

CERTIORARI

EPIFANIA PEREZ,
DEMANDANTE Y RECURRIDA

V.

BASILIO VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADO Y PETICIONARIO

RESOLUCION

San Juan, Puerto Rico, a 18 de octubre de 1979.

A la anterior solicitud de certiorari, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. Los Jueces Asociados señores Rigau y Negrón García no intervinieron.

ERNESTO L. CHIESA
SECRETARIO

APENDICE VIII
EN EL TRIBUNAL SUPREMO DE PUERTO RICO
NUM.: R-80-131

REVISION

EPIFANIA PEREZ GUZMAN,
DEMANDANTE Y RECURRIDA

V.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADO Y RECURRENTE

RESOLUCION

San Juan, Puerto Rico, a 15 de mayo de 1980.

A la anterior moción de reconsideración, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. El Juez Presidente señor Trías Monge y el Juez Asociado señor Rigau no intervinieron.

ERNESTO L. CHIESA
SECRETARIO

APENDICE IX

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

NUM. R-80-131

REVISION

EPIFANIA PEREZ GUZMAN,
DEMANDANTE Y RECURRIDA

V.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADO Y RECURRENTE

Moción solicitando Traducción y Certificación de las opiniones y órdenes emitidas en presente caso

AL HONORABLE TRIBUNAL:

Comparece el recurrente por conducto de los abogados que suscriben y muy respetuosamente expone, alega y solicita:

PRIMERO: Que en el presente caso la parte recurrente está preparando un recurso de certiorari para ante el Tribunal Supremo de Estados Unidos.

SEGUNDO: Que la regla 23 (J) del reglamento del Tribunal Supremo de Estados Unidos requiere que se someta el recurso de Certiorari con copia de las ordenes y opiniones emitidas en el caso por el Tribunal del estado.

La Regla 37 del Reglamento del Tribunal Supremo de Estados Unidos requiere que cuando un record que se tramita al Tribunal Supremo conste en lenguaje extranjero este, esté traducido bajo la autoridad de la Corte inferior.

TERCERO: Que la parte recurrente precisa que para cumplir con las antes citadas reglas este Honorable Tribunal provea una traducción oficial de las siguientes opiniones en este caso.

1. Sentencia emitida por el Tribunal Superior de Bayamón el 3 de agosto de 1977.
2. Orden de Lanzamiento emitida por el Tribunal Superior de Bayamón el 27 de marzo de 1978.
3. Mandamiento emitido por el Tribunal Superior de Bayamón el 5 de abril de 1978.
4. Resolución emitida por el Tribunal Superior de Bayamón el 20 de febrero de 1979.
5. Resolución declarando no ha lugar al Certiorari emitido por el Tribunal Supremo de Puerto Rico el 18 de octubre de 1979.
6. Resolución emitida por el Tribunal Superior el 28 de Febrero de 1980.
7. Orden declarando no ha lugar a la Moción de Reconsideración del Tribunal Superior de Bayamón del día 12 de marzo de 1980.
8. Orden declarando no ha lugar a la petición de Revisión emitida por el Tribunal Supremo de Puerto Rico el día 17 de abril de 1980.
9. Orden declarando no ha lugar a la Moción de Reconsideración emitida por el Tribunal Supremo de Puerto Rico el día 15 de mayo de 1980.

Por todo lo cual, la parte recurrente solicita muy respetuosamente de este Honorable Tribunal que a tenor con las reglas 23 y 37 del Tribunal Supremo de Estados Unidos se sirva ordenar y suministrar la traducción de las órdenes y resoluciones antes enumeradas.

## CERTIFICACION

Certifico que he enviado copia fiel y exacta de la presente moción al Lcdo. Cajigas Llamas en su dirección calle 2-B No. 142, Urb. Severo Quiñonez, Carolina, P.R.

En San Juan, Puerto Rico a 6 de junio de 1980.

GEORGINA CANDAL
FRANCISCA SANTIAGO NEGRON
*Servicios Legales de Puerto Rico*
*Apartado 727*
*Guaynabo, Puerto Rico*